**HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE**
**AND**
**HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY**

**Writ Petition No. 27458 of 2005**

Between

Vemula Venkataiah and others ..Petitioners

AND

The District Collector, Prakasham District and others ..Respondents

**:: JUDGMENT ::**

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| Counsel for the petitioners | Sri M.V.S.Suresh Kumar |
| Counsel for respondents 1 to 3 | Government Pleader for Revenue |
| Counsel for respondents 4&5 | Government Pleader for Panchayat Raj |
| Counsel for respondents 6, 7 and 10 | Sri M.Subba Reddy |

**22.12.2006**

**Per G.S.Singhvi, CJ**

In this petition filed in the name of public interest litigation, the petitioners have prayed for issue of a direction to respondent Nos. 1 to 3 to take steps for removing what has been described as unauthorized encroachment of public road comprising of Ac.0.09 cents in Survey No.397/2A2, Kanigiri Mandal, Prakasam District.

In the affidavit filed by petitioner No.1 – Vemula Venkataiah, the deponent has averred that he is the absolute owner and possessor of house bearing No.5/72, 5th Ward, Old Kuchipudipalli, Kanigiri Mandal, Prakasam District and other petitioners are residents of the same locality. He has further averred that there is a public road in Survey No.397/2A2 of Kanigiri, which is being used for going to Poleramma Temple and then to Kuchipudi Village. The width of the road is about 22 ft. Still further, he has averred that respondent Nos.6 to 11 have encroached the public road and made unauthorised constructions and despite representations made to respondent No.3 i.e. Mandal Revenue Officer, Kanigiri Mandal, the latter has not taken action for removing the encroachment. In paragraph 4 of his affidavit,
Shri Vemula Venkataiah has referred to Writ Petition No.18567 of 2005 filed by respondent Nos.6 and 7, which was disposed of by the learned Single Judge on 22-8-2005, and averred that after giving notice to respondent Nos.6 to 11, the official respondents have not taken action for removing the encroachment.

In the counter-affidavit filed by Shri M.Venkateswarlu, Revenue

Divisional Officer, Kandukur, Prakasam District (respondent No.2), it has been averred that as per Resurvey and Resettlement Register of Kanigiri Village of 1906, Survey No.397 was sub-divided into Survey Nos.397/1, 397/2, 397/3 and Survey No.397/2 was further sub-divided into Survey Nos.397/2A1, 397/2A2 and 397/2A3. Of these, Survey No.397/2A2 is patta land measuring Ac.0.07 cts. According to him, there is no road on the land comprised in Survey No.397/2A2 and six different persons are occupying the same.

In a separate counter-affidavit filed by Shri Avula Subba Reddy (respondent No.6) on behalf of respondent Nos.6, 7 and 10, it has been averred that the land comprised in Survey No.397/2A and 397/2B has been transferred on more than one occasion and there does not exist any road at the disputed site. In paragraphs 2 to 4 of his affidavit, Shri Avula Subba Reddy has averred as under:

> "2. It is submitted that before giving reply to the affidavit filed in support of main writ petition few facts are necessary for the purpose of proper appreciation of this case by this Hon'ble Court. It is submitted that the 7th respondent in the writ petition is my son. It is submitted that one Sri Thammineni Bodi Reddy was the original owner of the land in Sy.No.397/2A and 397/2B situated in 5th ward of Kanigiri town, Prakasam District from him Sri Roses has purchased the above said lands to an extent of Ac.1-90 cents by way of registered sale deeds. Out of the said lands, one Ambavarapu Subba Rao has purchased an extent of about 23½ of Ankanams (nearly 4 cents) in Sy.No.397/B from the said Roses on 14-12-1967 by way of registered sale deed and has constructed a building. The total extent of Ac.397/2B is Ac.1-59 cents and out of the said land Ambavarapu Subba Reddy has purchased 23½ ankanams of land by way of registered sale and was inducted into possession. Later, on 24-6-2003 the 2nd petitioner herein who is 7th respondent in the writ petition has purchased the said 23½ ankanams of land along with the building by way of registered sale deed from

Ambavarapu Subba Reddy. Later, the 2nd petitioner herein who is the 7th respondent in the writ petition has demolished the said building.

3. It is further submitted that one Smt.Muneer Bi w/o. Mohd. Rahaman has purchased an extent of 12 Ankanams from Sy.No.397/2A by way of registered sale deed dated 6-10-1965 from Roses and later from Shaik Madar Saheb S/o.Silar Saheb along with a tiled house. I have purchased the said land from the said Shaik Madar Saheb by way of registered sale deed on 30-3-2005. Thus, it is clear that by way of registered sale deed dt.30-3-2005, I am in exclusive physical possession and enjoyment of the property to an extent of 12½ Ankanams in Sy.No.397/2A and likewise, my son who is the 7th respondent in the petition by purchasing 12½ ankanams of land in Sy.No.397/2A from A. Venkateswarlu by way of registered sale deed dt.17-2-2000.

4. It is further submitted that one P. Venkata Ramana Reddy while the matter stood thus one P. Venkataramana Reddy S/o. Rami Reddy, Leader, Praja Front of Kanigiri Town with the connivance of the writ petitioners herein have hatched up a plan to mark a public message through our lands as well as the others lands who are respondents 8, 9 and 11 herein. The writ petitioners with the connivance of the said Venkataramana Reddy, Mandal Revenue Officer etc. stating that all of us have encroached upon the Govt. Poramboke land in Sy.No.397 and have constructed houses causing hindrance to the public passage which leads to nearby Poleramma Temple and due to this illegal constructions, they have to o round about to other prayers in the temple. Pursuant to their complaint, the then M.R.O., Kanigiri without notice to the petitioners vide his proceedings in Rc.A.118/2005 dt.17-8-2005 has directed the concerned Panchayat Secretary, Kanigiri to visit the lands in Sy.No.397/2A2 of the 5th ward Kanigiri and take steps for the removal of unauthorised occupants on the existing roads and restore the same for the use of the villagers. The said orders were without notice to us. Hence, myself and the 2nd petitioner

herein have filed W.P.No.18567/2005 before the Hon'ble Court and the same was disposed of by the Hon'ble High Court by directing the respondents therein i.e. the M.R.O., Kanigiri, R.D.O., Kandukur and another in directing them to cause necessary enquiry by issuing proper notice to the parties and to decide the issue. The Hon'ble High Court also directed the respondents therein not to dispossess the petitioners from the lands without following due process of law even if it found that they are in occupation of Govt. Poramboke land and not in private patta land. The present writ petition is filed by Vemula Venkataiah and 33 others against respondents 1 to 3 to declare their action in not taking any action against for erecting unauthorised structures in the public road situated in Sy.No.397/2A2 to an extent of 0-09 cents in Kanigiri in Prakasam District. In the said writ petition, the Division Bench of this Hon'ble Court by interim orders dt.26-12-2005 was pleased to direct the respondents 1 to 3 herein to cause an enquiry with regard to the matter and submit a report to the Hon'ble Court. At the same time, the 3rd petitioner herein who is the 10th respondent in the writ petition has filed O.S.No.121/2005 on the file of the Junior Civil Judge, Kanigiri against P. Ramana Reddy and others who are some of the writ petitioners herein for injunction restraining them from interfering with his peaceful possession and enjoyment of the property which he has purchased by way of registered sale deed dt.29-12-2002 which is a private patta land situated in Sy.No.397/2B. The learned Junior Civil Judge was pleased to grant temporary injunction on 31-5-2005 and the same was made absolute on 30-12-2005 and the same is in force till today. Suppressing the said fact, the present writ petition is filed. It is pertinent to submit here that questioning the granting temporary injunction C.M.A. No.4/2006 was filed before learned Senior Civil Judge, Kandukur and no orders were passed in the said appeal against us. Hence, the 3rd petitioner who is the 10th writ petitioners in the writ petition has purchased a private patta land by way of registered sale deed and not a Govt. poramboke land as alleged."

The petitioners have not filed rejoinder to the counter-affidavits of respondent Nos.2 and 6, 7 and 10.

We have heard Sri M.V.S.Suresh Kumar, learned counsel for the petitioners, learned Government Pleader for Revenue and Sri M.Subba Reddy, learned counsel for respondent Nos. 6, 7 and 10 and perused the record.

Admittedly, two of the private respondents had filed W.P.No.18567 of 2005 with the complaint that Mandal Revenue Officer, Kanigiri, Prakasam District was seeking to evict them without following the due process of law and the said writ petition was disposed of by the learned Single Judge on 22.8.2005 with the direction that the respondents shall take action in the matter of removal of the alleged unauthorized encroachment after giving notice and opportunity of hearing to the petitioners.

The case of the petitioners is that even though the Mandal Revenue Officer had issued notice for removal of the encroachment from the public road, no further action has been taken in the matter.

In our opinion, the grievance made by the petitioners that the official respondents have not taken steps to remove the encroachment made by the private respondents on public road is not well founded and direction in terms of the prayer made in the writ petition cannot be issued because the petitioners have not controverted the assertion contained in the counter-affidavits that the land in question is a patta land and there does not exist any road over it.

Shri M.V.S. Suresh Kumar, learned counsel for the petitioners fairly stated that rejoinder affidavits have not been filed by his clients to controvert the case set up by the respondents and submitted that instead of adjudicating the disputed questions of fact, the Court may relegate the petitioners to the remedy of civil suit.

In our opinion, the request made by Shri M.V.S. Suresh Kumar is reasonable and merits acceptance. Even otherwise, we are convinced that seriously disputed questions of fact call for adjudication as condition precedent to the determination of the petitioners' claim that private respondents have encroached the public road and such disputed questions of fact cannot be decided by this Court in exercise of power under Article 226 of the Constitution of India.

In the result, the writ petition is dismissed with liberty to the petitioners to avail appropriate legal remedy by filing civil suit.

As a sequel to dismissal of the writ petition, WPMP No.12288 of 2006 filed by the petitioners for interim relief is also dismissed.

**G.S.SINGHVI, CJ**

**C.V.NAGARJUNA REDDY, J**

22-12-2006
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